

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 93/10  
5293204

BETWEEN                      AFSOON KAVIANI  
   Applicant  
  
AND                                BEAUTY CO  
   Respondent  
  
AND                                JOSEPH BROOKS  
   Second Respondent

Member of Authority:      Philip Cheyne  
  
Representatives:            Afsoon Kaviani, Applicant in person  
   No appearance for Respondents  
  
Investigation Meeting:    16 April 2010 in Christchurch  
  
Determination:              19 April 2010

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**DETERMINATION OF THE AUTHORITY**

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[1]      Afsoon Kaviani worked as a beauty therapist in a business called *Beauty Co* which operates from premises at Westfield Mall in Christchurch. Her employer reduced her rate of pay from \$15.00 per hour to \$12.50 per hour. She seeks to recover any arrears against a respondent called *Beauty Co*.

[2]      There is no company or other legal entity called *Beauty Co* but Joseph Brooks is known to have some involvement in that business. At my direction the statement of problem was served on Mr Books by being emailed to him. Electronically generated receipts show that the Authority's email was delivered and the message displayed on the recipient's computer. On 17 February 2010 Mr Brooks rang and spoke to the support officer and promised to send a statement in reply by email. I infer from this that it was Mr Brooks who opened and read the documents sent to his email address. The Authority received a reply on 27 February 2010 in which is advanced justification

for the reduction in Mrs Kaviani's rate of pay. The reply email is in the name *Joseph Brooks* but is of course unsigned and shows as having been sent from a different email address.

[3] I formed the view that the matter was not likely to be effectively resolved through mediation so I scheduled an investigation meeting. Notice of that meeting was served on Mr Brooks when he attended at the Authority's offices for another matter. The Authority attempted to serve the proceedings on a company called *Beauty Management Riccarton Limited* at its registered office. Company records show Mr Brooks as the sole shareholder and director of that business. Mr Brooks received and Beauty Management Riccarton Limited was sent a memorandum from the Authority making it clear that the Authority might join either of them as a party to these proceedings and find them liable for Mrs Kaviani's claims. They were encouraged to attend the investigation meeting. I order the joinder of Mr Brooks and refrain from joining the company because of the service difficulties.

[4] Only Mrs Kaviani, her daughter and their friend attended the investigation meeting. Being satisfied that Mr Brooks and the abovenamed company were properly served with the statement of problem, the notice of investigation meeting and the Authority's memorandum I elected to proceed in their absence.

[5] There is a written employment agreement dated 17 November 2009. It has a space for the employer's name to be inserted followed by the printed words (*hereinafter referred to as "the company"*). The employer is then referred to elsewhere in the printed agreement as *the company*. Mrs Kaviani's daughter (Delaram Kazemi) told me that she wrote her mother's name and the words *Beauty Co* on this document in the spaces left for the names of the employee and the employer. There is no reason to doubt this evidence. Initials which appear to be *JB* are written on each page and alongside some handwritten changes to the hours of work. The changes to the hours of work were not written in by Mrs Kaviani or her daughter. Mrs Kaviani thought that the changes were written in by Mr Brooks.

[6] Mrs Kaviani's evidence, which I accept, is that she was given the employment agreement by Mr Brooks which she reviewed, signed and returned to him. Mrs Kaviani was unsure how long after she started work that this happened. However, there is documentary evidence to assist with this. Mrs Kaviani received printed payslips each week generated by payroll software which includes year to date totals.

The earliest payslip provided in evidence is for the pay period ending Sunday 29 November 2009. The year to date total indicates that Mrs Kaviani had worked similar hours in the previous pay period ending Sunday 22 November 2009. It seems likely that she commenced employment on or about Monday 16 November 2009. Because Mrs Kaviani dated the employment agreement on 17 November it is likely that she was given the proposed agreement by Mr Brooks the day before and took it home to review.

[7] In summary, the position is that Mrs Kaviani was offered and accepted employment as a result of exchanges with Anna (a manager of the business) who did not identify who was the employer. When she started work she was given a proposed written employment agreement by Mr Brooks but he too did not identify who was the employer. Because the employer did not identify itself on the proposed written employment agreement, Mrs Kaviani's daughter wrote in the business trading name *Beauty Co* and Mrs Kaviani signed the agreement. Mr Brooks appears to have initialled the employment agreement. In the second week of her employment, when she received her payslip for her first week's work, Mrs Kaviani would have seen the name of a company called *Beauty Management Riccarton Limited* on her pay advice slip. She continued to receive these pay advice slips until her employment ended. Aside from that, there is no evidence to the effect that Mrs Kaviani was employed by that company.

[8] Mr Brook issued and signed the proposed employment agreement. S.25(1) of the Companies Act 1993 provides that a company must ensure that its name is clearly stated in every document that evidences or creates a legal obligation of the company. S.25(2) provides that where a document that evidences or creates a legal obligation on the company is signed on behalf of the company, and the name is incorrectly stated, then every person who issued or signed the document is liable to the same extent as the company, subject to exceptions that do not arise here. I cannot clearly find that Mr Brooks signed the proposed employment agreement but he certainly issued it without indentifying the company's name and he initialled each page with the misdescription written in by Mrs Kaviani's daughter. If Mrs Kaviani was employed by the abovementioned company, Mr Brooks is personally liable under s.25(2) for any breach of obligation by the company. The other alternative is that Mrs Kaviani was paid but not employed by the company; in which case I find that Mr Brooks personally employed Mrs Kaviani.

[9] When paid for the pay period ending 3 January 2010 Mrs Kaviani was paid for time worked and for statutory holidays at the rate of \$12.50 per hour rather than the contractually agreed rate of \$15.00. The justification advanced in the email mentioned above is that Mrs Kaviani failed to produce proof of her qualifications. However the employment agreement is unequivocal about her entitlement to \$15.00 per hour. There was a shortfall of \$120.00 for the 48 paid hours. That was also a breach of Mrs Kaviani's employment agreement.

[10] Mrs Kaviani's evidence is that her hours of work for the following week were reduced to about four but her pay restored to \$15.00 per hour. She was not able to give me a copy of this payslip but I accept her evidence on the point. Mrs Kaviani then ceased work because she needed the fulltime employment provided in the employment agreement. Fulltime is not defined in the agreement but I take from the payslips that it meant in practice at least 40 hours work per week over five days. That means that Mrs Kaviani was paid \$540.00 less than her entitlement for the pay week ending 10 January 2010. That too was a breach of Mrs Kaviani's employment agreement.

[11] Mrs Kaviani did not receive any holiday pay following the termination of her employment. The last available payslip shows gross earnings of \$4553.75. To that must be added the arrears of \$120.00 for the week ending 3 January 2010 and the gross (partly paid) of \$600.00 for the week ending 10 January 2010. That results in holiday pay owing of \$421.90.

### **Summary**

[12] Mr Brooks is to pay Mrs Kaviani arrears of wages of \$660.00 and arrears of holiday pay of \$421.90.

[13] Mr Books is to pay Mrs Kaviani interest on these sums at the rate of 4.5% per annum starting on 11 January 2010 until the arrears are paid in full.

[14] Mr Brooks is to pay Mrs Kaviani costs of \$70.00 being the lodgement fee for these proceedings.

[15] I note that there has been no claim for a penalty for breach of employment agreement nor has any personal grievance been referred to the Authority in respect of this matter.

Philip Cheyne  
Member of the Employment Relations Authority

### **Postscript**

[1] This is the third Authority determination in respect of the business called *Beauty Co* at Westfield Mall and I have been alerted to a fourth matter yet to be investigated but assigned to another member. There appear to be significant issues over compliance with the Employment Relations Act 2000 even at a basic level such as written employment agreements properly identifying the employer.

[2] I will get the senior support officer to copy the three determinations already issued to the appropriate officials within the Department of Labour who may take up the matter with whoever is the employer to encourage compliance with the law and (if thought appropriate) to investigate apparent breaches.